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healthwise series

HEALTH CARE & RIGHTS OF PATIENTS

A comprehensive guide to a doctor-patient relationship and the rights of patients to seek health care





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Voluntary Health Association of Goa



Voluntary Health Association of India

Publisher

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Printed at VHAI Press

© Voluntary Health Association of India, 2007

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ISBN: 81-89877-06-2

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Where the mind is without fear and the head is hold high Where knowledge is free Where the world has not been broken up into fragments By narrow domestic walls Where words come out from the depth of truth Where tireless striving stretches its arms towards perfection Where the clear stream of reason has not lost its way Into the dreary desert sand of dead habit Where the mind is led forward by thee Into ever-widening thought and action Into that heaven of freedom, my Father, let my country awake.

Rabindranath Tagore

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Preface

In recent times, the medical profession has attracted considerable attention with regard to the duties of doctors and the professional code of ethics. However, just as the doctor has certain duties towards the patient, the patient has certain rights regarding the choice of healthcare providers, easy access to health care, correct and timely information about his/her illness, option to consult another doctor, and other issues that arise when receiving health care. Moreover, there exists a dearth of information and awareness regarding patients' rights in general. These rights are usually conceived as consumer rights, as patients are now deemed consumers as per the Consumer Protection Act, 1986. As this booklet rightly indicates, there is no single point of reference for such rights, as indeed is the case in many developing countries. This booklet has tried to broaden the ambit of patients' rights by including rights like preventive measures, personalised treatment, and right to complain, etc.

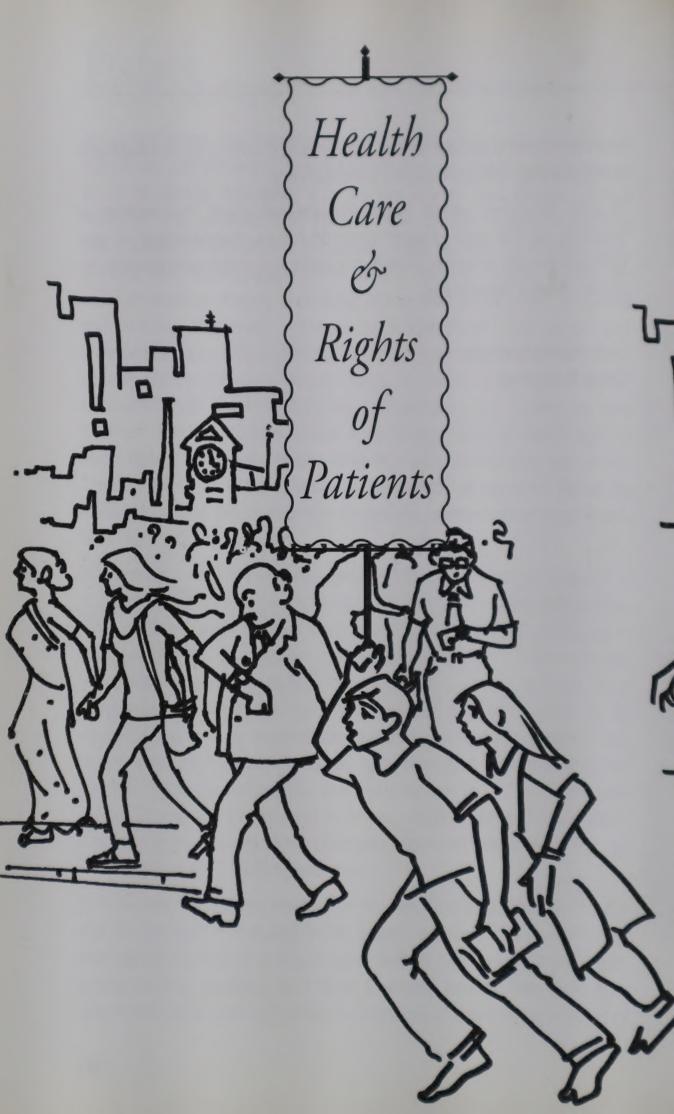
It is better to regard patients' rights as being an inherent property of a caring, mutually respectful and properly Hippocratic relationship. The doctors' oath to pay first consideration to the health of a patient should guarantee the patient's rights. Unfortunately, in a profit-driven economy, the perception of the patient as a consumer dehumanises the care concept of health. There is an urgent need to look beyond such boundaries where a patient has, apart from his/her usual rights, also the right to breathe clean air free from contaminants, the right to live in a clean and safe environment and be treated in privacy with respect. This booklet has comprehensively and precisely documented the rights of patients in a user-friendly manner.

I hope that the current booklet on Health Care and Patients' Rights will fill the void in this important aspect of health care. The user-friendly presentation of the subject matter will be useful to health professionals, patients and their families, health care providers and NGOs, thus strengthening the process of developing a bond of

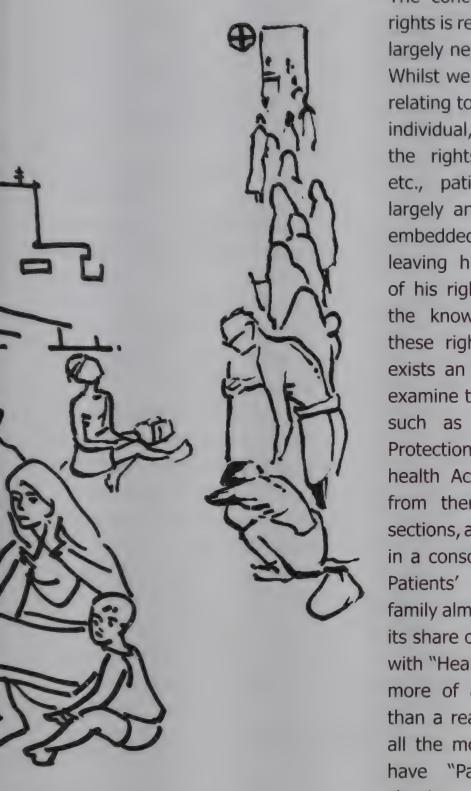
trust between a patient and a doctor and creating an atmosphere conducive for efficient health care delivery.

At this juncture, when Public-Private-Non-profit Partnership is evolving as the way forward towards future management of our national health systems, this publication is a viable contribution to public health awareness.

Alok Mukhopadhyay Chief Executive



Introduction



The concept of patients' rights is relatively new and largely neglected in India. Whilst we have clear laws relating to the rights of an individual, human rights, the rights of the child etc., patients rights lie largely and often deeply, embedded in various laws, leaving him/her ignorant of his rights and without the know-how to claim these rights. Thus there exists an urgent need to examine the various laws, such as the Consumer Act. Protection public health Acts, etc., extract from them the relevant sections, and present them in a consolidated form as Patients' Rights. Every family almost certainly has its share of patients - and with "Health for All" being more of a dream rather than a reality, it becomes all the more pertinent to have "Patients' Rights" concisely clearly and documented.



In this manner this book attempts to:

- Put together the patients' rights, which may lie hidden in various laws, in a consolidated form that is easy to understand, and where necessary, provide appropriate explanations.
- Serve as a reminder for patients, their families, as well as health care providers about the duties and obligations they have towards each other.
- Create awareness among the general public about realistic expectations from health care providers.
- Provide a ready reference manual for NGOs and those involved in health care to help them lobby for patients rights and if necessary, for legislation designed to generally improve health care.
- Create awareness about the rights of health care providers.
- Facilitate the meeting of patient and health care provider on a common and mutually beneficial platform, the patient so that ultimately derives maximum benefit from the system.
- Provide avenues for redress in the event that a patient genuinely feels that the system has failed him.

What are the rights of a patient?

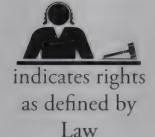


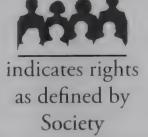
1. Right to preventive measures

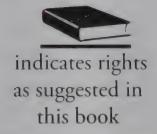
Every individual has the right to proper service by the Government/ concerned Authorities in order to prevent illness or disability. This includes access to relevant information and scientific advances related to preventive measures against spread of diseases by the Public Health Department through the Directorate of Health Services and its subsidiary, the Department of Preventive and Social Medicine.

This Right thus includes the right to breathe clean air, free from contaminants, and the right to live in clean, hygienic surroundings, with proper sewage and waste disposal. Every individual has the right to be protected from misleading, or dubious information, such as misleading advertisements, and in particular, those that lead the patient to unqualified practitioners. An individual has the right to clean and pure drinking water, and food, and the right to immunization against disease (e.g. Tetanus, BCG, Polio vaccinations) at the right time, free of cost at government institutions. It is also the Right of every child to receive disease free, clean, breast milk from its mother. The government's policies and actions, and the goal and mission of every health care service and every individual should be towards PREVENTIVE HEALTH CARE!

The text in this book has been classified as follows:









2. Right of access to health care services

Every individual has the right of access to the health services concerning her or his health needs. Health services must guarantee equal access to everyone without discrimination on the basis of caste, creed, sex or social status, financial resources or place of residence, type of illness or time of access to services.

Any individual requiring treatment, but unable to sustain its cost, has the right to be served free of charge by the public health sector. Every human being, even without a residence permit, has the right to urgent or essential outpatient and inpatient care. Any individual suffering from a rare disease has the same right to the necessary treatment and medication as an individual with a more common disease.



3. a) Right to information on the patient's own health status

Every patient has the right of direct access to her or his clinical file and medical records, to make copies of their contents, to ask questions regarding all documents, reports and records contained within, and to obtain correction of any errors they might discover.



3. b) Right of access to information on health care

Every individual has the right of access to all information available with the health services regarding their state of health; and further information on the use of these services, along with all scientific research and technological innovation available to members of the public in need of health care.

Health care services, providers and professionals are duty-bound to provide patient-specific information, particularly taking into account the religious, ethnic or linguistic background of the patient. Health services are responsible for making all information easily accessible, removing bureaucratic obstacles and educating

health care providers in preparing and distributing information. This information may come from either public or private sources, provided that it meets the criteria of accuracy, reliability and transparency.

4. Right to informed consent

Every individual has the right of access to all information that might enable her or him to actively participate in decisions regarding her or his health. This information is a pre-requisite for any procedure or treatment, including participation in scientific research. Health care providers and professionals must give the patient all information related to a treatment or surgery, including its associated risks and discomforts, side effects and alternatives. This information should be provided well in advance, the only exceptions being in the case of an emergency or life threatening situation, (at least 24 hours notice) to enable the patient to actively participate in the therapeutic choices regarding her or his state of health.

Health care providers and professionals must communicate in a language known to the patient, in a manner that is comprehensible to persons with no technical background.

In all circumstances where a legal representative is required to

provide informed consent – the patient, whether a minor or an adult unable to fully comprehend, must still be involved as much as possible/practicable in decisions regarding her or his treatment.

A patient has the right to refuse a treatment or medical intervention and to change her or his mind during the treatment, refusing its

continuation.

A patient has the right to refuse to provide information about her or his health status. However, the provision of as much information as possible is always in the best interests of the patient to.



5. Right to free choice

Every patient has the right to decide which diagnostic examinations and therapies to undergo, as well as which primary care doctor, specialist or hospital to use. Health services are duty-bound to guarantee this right, providing patients with unbiased and factual information on the various centres and doctors competent to provide the necessary service. They must remove any obstacle that limits the exercise of this right.

A patient who does not have trust in her or his doctor has the right to change her/his doctor, always bearing in mind that frequent changes may affect the continuity of treatment.



6. Right to privacy and confidentiality

Every individual has the right to confidentiality of personal information, including information regarding her or his state of health and potential diagnostic or therapeutic procedures, as well as the protection of her or his privacy during the performance of diagnostic examinations, specialist visits, and medical/surgical treatments in general.

All data and information relating to an individual's state of health, and to medical/surgical treatments to which she or he is subjected, must be considered private, and as such, adequately protected.

Personal privacy must be respected, even in the course of medical/surgical treatments (diagnostic exams, specialist visits, medications, etc.), which must take place in an appropriate environment and in the presence of only those who are absolutely essential to the procedure (unless the patient has explicitly given consent or made a request).

7. Right of respect for the patients' time

Every individual has the right to receive necessary treatment within a swift and predetermined period of time. This right applies at each phase of the treatment.

Health services have a duty to fix waiting times, within which certain services must be provided on the basis of specific standards and depending on the degree of urgency of the case.

Doctors must devote adequate time to their patients, including the time dedicated to providing information.



8. Right to the observance of quality standards

Every individual has the right of access to high quality health services on the basis of the specification and observance of precise standards.

The right to quality health services requires that health care institutions and professionals provide satisfactory levels of technical performance, comfort and human relations. This implies the specification and observance of precise quality standards, which are subjected to regular peer review.

🚣 9. Right to safety

Every individual has the right to be free from harm caused by poor functioning of health services, medical malpractice and errors.

Every individual also has the right of access to health services and treatments that meet high safety standards.

To guarantee this right, hospitals and health services must continuously monitor risk factors and ensure that all medical devices are properly maintained, serviced and validated from time to time and operators are properly trained.

All health professionals must take full responsibility for the safety of all phases and elements of medical treatment.

Doctors must be able to prevent the risk of errors by monitoring precedents and undergoing continuous training. Healthcare staff that report existing risks to their superiors and/or peers must be protected from any adverse consequences or victimization

10. Right of access to innovation

Every individual has the right of access to innovative procedures, including diagnostic procedures, according to international standards and independently of economic or financial considerations.

The health services are duty-bound to promote and sustain research in the biomedical field, paying particular attention to rare diseases. Research results must be adequately disseminated.

11. Right to avoid unnecessary suffering and pain

Every individual has the right to be spared as much suffering and pain as possible, in each phase of her or his illness.

The health services must commit themselves to taking all measures to achieve this end, such as providing palliative treatments and simplifying patients' access to them.

12. Right to personalised treatment

Every individual has the right to diagnostic or therapeutic programmes tailored as closely as possible to her or his personal needs.

The health services must guarantee, to this end, flexible programs, oriented as much as possible to the individual's needs, making sure that the criterion of economic sustainability does not prevail over the right to health care.



13. Right to complain

Every individual has the right to complain whenever she or he has suffered harm, or not received treatment/service to her/his satisfaction. He or she further has the right to receive an adequate response or other feedback to the complaint.

The health services ought to guarantee the exercise of this right, providing (with the help of third parties) patients with information about their rights, enabling them to recognise violations and to formalise their complaint.

A complaint must be followed up by an exhaustive and comprehensive written response by the health care provider within a fixed period of time.

Complaints must be made through standard procedures and facilitated by independent bodies and/or citizens' organisations and cannot prejudice the patients' right to take legal action or pursue alternative avenues for redressal.



⁴ 14. Right to compensation

Every individual has the right to receive appropriate compensation within a reasonably short time whenever she or he has suffered physical, moral or psychological harm caused by treatment at a health care facility.

Where patients' rights may be held in abeyance

A doctor is obliged to render services to a patient in an emergency. However, in certain situations the doctor may refuse/declare his inability to treat the patient. For example at such times as:

- i) Are beyond his practising hours
- ii) The case is outside his/her speciality, beyond the competence and qualifications of the doctor or beyond the facilities available in his/her practice
- iii) The doctor is unwell or a family member is ill
- iv) The doctor has an important social function in the family and the case is not an emergency
- v) The doctor has consumed alcohol or is mentally disturbed or under severe psychological pressure
- vi) The patient has been defaulting in payment and the case is not an emergency
- vii) The patient or her/his relations are un-cooperative, violent or abusive
- vii) The doctor suspects the patient to be a malingerer. (A malingerer is a person who fakes symptoms with ulterior motives).
- viii) The patient refuses to give consent/accept risk
- ix) The patient demands specific drugs like amphetamine, or athletes/body builders demanding Steroids, etc.
- x) The patient rejects low cost remedies in favour of high cost alternatives
- xi) At night, on grounds of security if the patient is not brought to him
- xii) An unaccompanied minor patient or a patient of the opposite sex
- xiii) Any new patient, if she/he is not the only doctor available and it is not an emergency

Do not forget that the patient's rights become questionable when:

- 1. The patient arrives at a very late stage in the course of an illness some times in its terminal stages
- 2. The patient finds that the consulting time/waiting time for consultation/treatment does not suit her/him and the complaint is based entirely on this issue, as she/he is free to approach another doctor
- 3. The patient comes with no record whatsoever of treatment already received.
- 4. The patient hides facts from the doctor. The doctor does not have any foolproof method to know whether the history is true
- 5. The patient unreasonably questions the probable diagnosis, drugs prescribed, their role, side effects, cost, interaction etc. and avoids taking the prescribed medicine
- 6. The patient's behaviour subsequent to leaving the clinic is inappropriate, for example:
 - medicines prescribed are not purchased
 - medicines are not taken for the prescribed duration or dosage
 - precautions advised, are not followed
 - follow-ups are not attended at all, or done so at an inappropriate interval/time
 - medicines of other systems are used without the doctor's knowledge or approval

Remember

- The doctor is also a human being, with his own family and commitments, just like you.
- Treating you is his profession.
- Shelhe has a right to earn a living from this profession.
- And she/he also has a right to a private life.

Guidelines



a) Choosing a doctor

Before finalising a doctor you may need to find out and confirm the following things:

- Is the doctor registered with Indian Medical Council/State Medical Council or other appropriate Council?
- Is the doctor certified/qualified to be a specialist?
- What are her/his qualifications? Have the qualifications been conferred by recognised bodies/authorities?
- Is the doctor affiliated to any local hospitals?
- Where did the doctor receive her/his training?
- How long has the doctor been practicing?
- How long has the doctor been in the community?
- Is the doctor easily accessible?
- How long does it take, on average, to get an appointment?
- Does the doctor keep patients waiting for a long time?
- Is the doctor available by phone at nights and on weekends? Can you reach the doctor in case of an emergency?
- Who covers for the doctor when she/he is unavailable?
- Is the doctor involved only in consultations and treatment or does she/he have other interests such as a pharmacy, a diagnostic centre (clinical laboratory/radiological centre) or even a hospital where she/he has substantial interests directly or indirectly?



When you visit a doctor

Write down your questions before your visit. List the most important questions first. This will help to make sure that you ask those questions and that the doctor answers them.

- Bring an up-to-date "health history" (or your medical records)
 with you. Also bring a list of all the medicines that you take.
 Write down when and how often you take your medicines.
- Tell your doctor about everything you take for your health.

 This includes things you buy over the counter at the drug store or anywhere else for example, herbs or vitamins.
- Tell your doctor about your main health problem first, then discuss the secondary symptoms.
- It may be embarrassing to tell your doctor some things about yourself. But the more your doctor knows about you, the better advice she or he can give you.
- If you have x-ray films, test results, and medical records, give them to your doctor.
- Ask your doctor to draw pictures if that might help to explain something to you.
- Take notes.
- Let your doctor know if you need more time. If the doctor has no more time that day, ask if you can speak to a nurse or other staff person, or return for another appointment.
- Ask for something in writing that tells you what you need to know or do for your health problem.
- Your doctor may have booklets and tapes that can help you.
 If not, ask how you can get more information.

Tell your doctor about your main health

problem first, then discuss the

secondary symptoms



Solution b) A rational approach to tests

Blood tests, x-rays, and other tests may help your doctor learn about your health problem.

Here are some questions you may wish to ask about tests.

- How is the test done? How long does it take?
- What will the test tell us?
- Can the test cause any health problems?
- Are there any risks associated with the test?
- How much does the test cost?
- Do I need to do anything before the test?
- Will the test be painful?
- How will I get the test results? How long will it take to get the results?
- Is this test the only way to find out what we need to know? If there are other ways, what are they?
- Might I need other tests?
- What is the next step after the test?

Remember

Patients who work as partners and talk to their doctors are often happier with their care. After your visit to the doctor, you will learn a lot about how easy it is to talk with the doctor. You will also find out how well the doctor can meet your needs.

c) Diagnosis – what you should do with it

Ask your doctor (or someone else in your doctor's office) to explain what illness you have and how it might affect you and others in your family.

Here are some questions you may want to ask:

- What illness do I have?
- What is the outlook for this health problem?
- Will I need to make changes in my daily life?
- Could someone else in my family get the same health problem?
- Will I need special help at home for my health problem? If so, what type of help?
- Do you have anything I can take home and read about my health problem?
- Is there a support group for people with my health problem?



d) Deciding on a line of treatment

Learn about your treatment options

Often there is more than one way to treat a health problem. The next step is for you and your doctor to look at these treatment options. Here are some examples of the choices you may have for treating your health problem:

- Seeing a specialist. For example, if you have a heart problem, your doctor may want you to see a doctor who treats only heart problems.
- Changing your behaviour/lifestyle. For example, if you have high cholesterol, your doctor may want you to take a low-fat diet and get more exercise.
- Taking medicines which your doctor orders. For example, if you have high blood pressure, your doctor may want you to take medicine to lower it.
- Taking medicine you buy "over the counter". For example, if you are in pain, your doctor may suggest that you take a pain medicine, like Paracetamol, that you can buy "over the counter".

• Surgery. For example, if you have bad arthritis in your knee, your doctor may want you to have surgery to replace the knee joint.

All treatment options have pros and cons. Here are some questions you may want to ask your doctor

- What is the best treatment for what I have? Are there other choices?
- What are the chances the treatment will work?
- What good effects can I expect from the treatment? When will I see them?
- What side effects might I get from the treatment? What can be done about them?
- Will the treatment affect any other medicines I take? Will the food I eat affect the treatment?
- Will the treatment cause pain? What can I take for the pain?
- How much does the treatment cost? How much will I have to pay? Will my insurance policy cover the expenses?
- What might happen if I choose to have no treatment at all?
- Can you give me something to read about treatment for my health problem?



Finding out which treatment options are best for you

Not all treatments have been proven to work, and/or may not be the best treatment for your particular health condition. For some conditions there are "clinical practice guidelines" that can help the doctors and patients make the right choice of treatment. They are written by the doctors and other experts, who read many published studies of treatments. Published studies are evidence of whether a treatment works or not. After they read the published studies, the experts decide:

- Which treatments seem to work
- What kind of health problem a treatment seems to work best for
- What kind of patient a treatment seems to work best for
- Which treatments do not seem to work?

e) What if you need surgery?

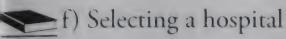
Some surgery must be done right away. However, most operations are not an emergency. That means you have time to talk with your doctor and decide what course of action is best for you. No surgery — not even minor surgery — is risk free. Learning about the pros and cons of surgery can help you decide if it is right for you. Research shows that patients are often more satisfied with the results of surgery when they know the facts.

Here are some questions you may want to ask before you decide to have surgery:

- What is the exact name of the surgery you think I should have? What does it involve?
- How often does this kind of surgery solve the health problem
 I have? How much does it help?
- Where will the surgery be done? Have many such surgeries been done there?
- Who will conduct the surgery?
- Do you often work with this surgeon? Has she or he done many of these surgeries?

- What are the good and bad effects of this surgery?
- How much will the surgery cost? How much will I have to pay?
 Will the insurance company pay for it?
- Is there anything I should do before the surgery? Is there anything I should not do?
- What problems might occur after the surgery?
- Will the surgery hurt? What can I take for the pain?
- How long will it take me to get better? Will I need additional therapy? What kind?
- Will I need help at home after the surgery? What kind of help?
- Do I really need this surgery? Are there other ways to treat my health problem?
- If there is another way to treat my problem, how much will it cost? How much will I have to pay? Will the insurance company pay for it?
- What are the pros and cons of treating my problem another way?
- What might happen if I wait to have the surgery? Or never have it at all?





There will be a lot of questions and often some debate in the minds of patients and their family members, as to which hospital they should admit the patient. Here are some questions and some practical suggestions:

1. Is this a hospital where my doctor can treat her/his patients?

The first thing to find out is if your doctor can treat you while you are in this hospital. (Doctors usually have "admitting privileges" in only a few hospitals.) If not, you may want to choose a hospital where your doctor can treat you. Or you may choose to go to this hospital, knowing that you will need to be under another doctor's care while you are there.

2. Do the staff at this hospital treat a lot of people with my health problem?

Your choice of hospital may depend on the kind of health problem you have. Sometimes a hospital is known for treating a certain kind of problem like heart disease. If you need that kind of treatment, you may want to choose that hospital. If you have a rare or serious health problem you may want to go to a hospital that treats a lot of people who have the same problem. It may be helpful to talk with your doctor about which hospital you should choose.

3. How far is the hospital from my home?

A hospital close to you home is of course a big plus point. The closer the hospital, the more convenient it is for family members caring for the patient to commute, help in taking turns, satisfy the patients needs for utility items and home cooked fresh food, besides giving the patient a sense of security and satisfaction that she/he is 'close' to home. If there isn't a suitable hospital in close proximity, one may have to make do with one a little away from home. In certain locations, villages or even cities, where some facilities may not be available, the patient may have to be taken to a hospital which is far away and at times even out of the state, or country. Whilst it is the right of every patient to have

health care as close to her/his home as possible, it is not always feasible for the government to provide such facilities in every locality, considering the cost factor and availability of suitable health care providers. This is especially so in the case of various super specialty treatments like heart surgery, cancer treatment, complicated surgery and procedures, organ transplants, rare or costly diagnostic procedures, etc.

- 4. Is the hospital well maintained, clean and hygienic?
- 5. Does the hospital have all the infrastructure, and equipment needed to take care of my problem, and also to deal with any emergencies, if any, during the procedures?
- 6. Are the rates/charges at the hospital affordable?

Enquire about the various charges you will be levied while you are at the hospital, and see if you can afford it. If not, you may have to go to another hospital with rates you can afford.

7. How well do the staff at this hospital treat people with my health problem?

Research shows that hospital staff have better success when they do a procedure often. You may want to ask the doctor:

- How often is this procedure done at this hospital?
- How often does the doctor do this procedure?
- How well do patients do after they have had the procedure?

8. What is done by the hospital to make sure patients get the best quality care?

Hospitals generally try to improve their quality of care on a continuing basis. One way to do this is to keep track of how well patients do. For example, if many patients get infections whilst they are in the hospital, the hospital tries to find out what might be causing the problem. Then it makes changes and tries to do better so that fewer patients get infections.

9. Does the hospital meet national quality standards?

Some states in India have established quality standards outlined in their Nursing Home Regulations Acts, and it is useful and

important to refer to these. At present a comparison can be made by speaking to patients treated in these hospitals. In the near future there will be a system of Accreditation of Hospitals.

The process has already started with the establishment of the National Accreditation Board for Hospitals and Health Care providers, (NABH) set up under the Quality Council of India (QCI). This accreditation is at present on a voluntary basis; and a number of major institutions across the country have been accredited by the NABH

10. How else can I find out about a hospital's quality of care?

- Ask if the hospital has a special team of health care providers that works with people who have your health problem.
- Every hospital should have an officer in charge of quality. Ask how the hospital makes sure it is giving high-quality care.
- Ask your doctor what she or he thinks about a hospital's quality of care.



Every hospital should have an officer in charge of quality. As patients, we must ask how the hospital makes sure it is giving high-quality care

11.Certification: If you are getting skilled care, and Medicare or Mediclaim are paying for your care, make sure the nursing home is Medicare or Mediclaim certified/empanelled.

g) Filing a complaint

When a patient suffers injury due to the doctor's negligence she/ he may seek relief under the following laws/authorities in India.

- 1. Criminal Law
- 2. Civil Law
- 3. Consumer Protection Act
- 4. Medical Councils
- 5. Right to Information Act
- 6. Other Laws

1. Criminal Law

In India, Criminal Law is applicable to all. In other words in the eyes of law all are equal whether rich or poor, educated or uneducated, urban or rural, leader or ordinary citizen; and a doctor is no exception. Normally people do not go to the police because the doctor provides treatment for the benefit of the patient in good faith and with the patients' consent. Further, the ambit of criminal negligence has been recently clarified by the Supreme Court and as such a doctor acting in good faith cannot easily be held guilty of criminal negligence

However, she/he can be held liable for negligence and if so, may be made to pay compensation under civil law. It is therefore important to appreciate the basic differences between the two:

- There are separate courts for civil and criminal cases, both of which come under the jurisdiction of the High Court
- Proceedings in Criminal cases are initiated by the State as a result of a specific complaint which then becomes a First Information Report (FIR.); or suo moto by the appropriate State authority. A civil suit on the other can be initiated by the public either individually or collectively
- A law enforcement agency is involved in a criminal case, whereas they need not be in a civil suit.
- The focus of action in a criminal case is to punish the perpetrator if found guilty; whereas the civil suit seeks to right a wrong, and to compensate the victim

- The criminal suit involves the State's public prosecutor and the defendant's lawyer. A civil suit involves the defendant's lawyer; the applicant need not engage a lawyer
- A criminal suit can be closed only on the direction of the court or the recommendation of the public prosecutor; whereas a civil suit can be withdrawn at any time, for example by a compromise.

2. Civil Law

This in the context of a patients' treatment involves a) The Law of Contract and b) Law of Tort.

a) Law of contract. Here there is a specific contract between a patient and a doctor, which may be oral, written, or an implied contract, by virtue of which the doctor is supposed to treat the patient, and for which the patient is expected to pay specified or reasonable fees. Both parties are supposed to act according to the terms and conditions of the contract, as in any other civil contract.

b) Law of Tort:

Medical negligence is a branch of the Law of Negligence, which in turn is a branch of the law of Torts. The Tort law is not based on any act of Parliament, but one that has been evolved by judges and developed/evolved over the years through various judicial decisions. Very broadly, when one person causes harm to another, this law provides a remedy in the form of monetary compensation to the victim. The central idea is to compensate the victim rather than punish the offender.

In the medical profession, it would broadly apply when a doctor commits an act which another reasonable doctor of her/his standard/experience would not commit or if the doctor omits to do something which another doctor of similar standing and experience would certainly do. This would come within the ambit of medical negligence. It has to be shown that there was a close causal relationship between the act (or failure to act) and the resulting damage. If this can be established, the doctor would

then be liable under the Law of Tort, and the patient entitled to compensation.

It is pertinent to mention that the law also recognises "Contributory Negligence" where the patient may be partly or wholly responsible for the problem by virtue of his own irresponsible actions

3. Consumer Protection Act (C.P.A.)

In 1985, the U.N. General assembly passed a resolution, the "Consumer Protection Resolution" (Resolution No39/248), which sought to address the concerns of consumers in developing countries. As a member state, India passed the Consumer Protection Act of 1986.

This Act was a hotly debated subject in the medical world, because whilst the aim was to provide a mechanism for speedy and simple redress to a consumer, a debate ensued as to:

- a) Whether doctors were included in the ambit of the Act and
- b) Whether government doctors were covered by the Act

On both counts, the Supreme Court has given its verdict; doctors, including government doctors did come within the purview of the Act.

Under this Act, there is:

- i) A District Forum at district level to handle claims of less than Rs 5,00,000
- ii) A State Commission at State level to handle claims between Rs 5,00,000 and Rs 20,00,000 and appeals
- iii) A National Commission at National level for claims over Rs 20,00,000 and appeals
- iv) The final authority is of course the Supreme Court

The Consumer Protection Act, initiated by the UN seeks to address the concerns of consumers. India passed the Act in 1986.

I. Who can file a complaint?

- a) The patient or the legal heirs.
- b) Registered consumer organisations

- a) Deficiency in treatment (service)
- b) Misrepresentation about the quality, type and standard of the treatment
- c) False claims that the treatment is recognised by some institution or government

A complaint must be filed within two years from the date on which the cause of action has arisen. If a complainant satisfies the Forum or Commission that she/he had sufficient cause for not filing the complaint within such a period, the Forum, after recording their reasons for condoning such delay, may entertain the complaint.

<u>■ IV. What is the procedure?</u>

The complaint can be filed on plain paper by post or in person by the patient. The petition does not require any court fee or stamps to be affixed. It must contain the details of the deficiency in service with necessary proof in four copies (in the case of the district forum). The doctor will get one copy from the forum or commission and will be given a date by which she/he should reply in writing.

V. What powers does the forum have?

The forum at each level can award compensation as it sees fit within the quantum limitations mentioned above. It also has the power to punish in the following circumstances:

- i) One month to three years in prison or a fine of Rs 2000 to Rs 10,000 or both for failure to comply with an order
- ii) A fine of up to Rs 10,000 for filing a frivolous complaint



4. Medical Council

A patient can file a complaint with the respective State Medical Council for a doctor's negligence. If the council finds sufficient cause, it has the power to strike a doctor off the medical register Unfortunately a council has the power to punish the doctor but does not have the power to order compensation even if the negligence is proved. Further, whilst the council has powers to initiate action suo moto it is only after the doctor's negligence is proven by the trial court and upheld by the superior appellate courts that the council can take definitive action.

In this context, the Supreme Court recently passed a judgement whereby the complainant is free to approach the Medical Council of India if the State Council does not come to a decision on the complaint within six months. Further if the complainant is aggrieved by the decision of the State Council he/she is free to appeal to the MCI for redress within sixty days of the decision. This period may be extended by a further sixty days if sufficient cause for the delay can be shown



5. The Right to Information Act

A recent development that has strengthened the hand of the common man is the passage of the Right to Information Bill 2004 that has now come into force. Though a number of states like Tamil Nadu, Goa, Rajasthan, Karnataka, Delhi, Maharashtra, Madhya Pradesh, Assam and J & K, already had their own Right to information Acts, there was no Central Law until this Bill was passed. This Central Act supersedes the State Acts, and is applicable to all of India except J&K.

Essentially this Bill provides "a practical regime of right to information for people to secure access to information to promote transparency and accountability". The Bill per se does not have any provision for awarding compensation.

Highlights of the Bill:

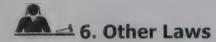
Any citizen can request information from a "public authority",

which is any body established under the constitution, by parliament, or owned and controlled by the Central or State Government. Private bodies are excluded, but any organisation that is substantially funded by the appropriate government does come within the purview of this Act. Information can be requested if it "relates to a private body that can be accessed by a public authority under any law in force".

- The "Right to Information" includes the right to inspect/copy records and to take samples and inspect public works.
- Exemptions relate to matters of national security, international relations, legally confidential or commercially sensitive information, and documents of the cabinet or council of ministers. However there is an override "if public interest in disclosure of information outweighs the harm to the public authority".
- The citizen must make a written request for information (including e-mail) in English, Hindi, or the local language, to a Public Information Officer (PIO) or an assistant PIO, paying a fee as may be prescribed. If an applicant is unable to make a written request, the concerned officer must render all assistance to ensure that the verbal request is reduced to written form.
- The application must be responded to within thirty days, except in matters concerning life and liberty, where the information must be provided within forty-eight hours.
- Failure to respond is deemed to be a refusal.
- Rejection of an application must be conveyed in writing.
- Fees are collected only if the application is approved. If the application is not dealt with in time, no fees may be collected.
- The applicant may appeal in the event that he feels that the information has been wrongly denied. In this case the appeal is directed to the person immediately above the PIO.
- A second appeal may be directed to an independent "Central Information Commission" which has the powers of a civil court.

 Penalties can be imposed on a PIO for refusing to accept an application, refusing to supply the information, giving misleading information or destroying information. This is Rs 250 per day, up to a maximum of Rs 25,000. The officer is further liable to disciplinary action under the rules of service applicable to him

Whilst the Central Bill is considered to have many lacunae, it is generally considered a step in the right direction.



Under the MTP Act, the Drugs and Cosmetic Act, Drugs and the Magic Remedies (Objectionable Advertisements) Act etc., a patient can file a complaint to the respective authority.

Here too, there is little scope for a compensation order.

The Right to Information Act has strengthened the hand of the common man. It provides the right to people to secure access to public information in order to promote transparency and accountability.

The duties of a doctor

1. To listen

When a patient comes to a doctor, the doctor should first of all, listen very carefully to the patient's complaints, as described in her or his own words. She/he should also take all relevant past, personal and family history. Then she/he should obtain further details by asking questions and note down all the relevant points in the patient's case paper. Often a patient comes to a consultant or a hospital with a reference note from another doctor. This reference note should never be neglected. In many cases the patient does not have the details of treatment taken in the past from another doctor. In such cases, the doctor being consulted should contact the previous doctor and obtain the relevant details of the treatment given before starting any new treatment. Sometimes a patient knowingly or unknowingly does not reveal some vital information even after direct questioning by the doctor. This may lead to difficulty as the doctor may start treatment without this knowledge.

2. To examine

After taking a proper history, the doctor should examine the patient thoroughly. Often, a physical examination alone does not suffice to make a perfect diagnosis. In these circumstances the doctor has to order certain investigations recognised by the medical field at that time and available like X-Ray, Lab-Test, Sonograph, etc. The duty of the doctor is not over with just carrying out the investigations. She or he must analyse the reports and use them to treat the patient in a proper manner.

3. To explain

Before starting the treatment the doctor must explain the disease in simple, non-technical language. The seriousness of the disease, various available treatments, their temporary or permanent side effects, other risks involved etc. must be explained so the patient can independently choose the treatment according to her/his capacity and circumstances. Sometimes the doctor may not disclose all the facts or information to the patient, if in her/his honest opinion that information is likely to cause psychological harm to the patient. This is referred to as "Therapeutic Privilege". If exercised, it would be prudent to take a close relative into confidence.



4. To refer

It is a basic duty of the doctor, to handle only those cases, which are within the limits of her/his skill, knowledge and experience. Moreover she/he must take into consideration the availability of equipment, staff, medicine and other circumstances as well. Once the patient is under her/his care, it is negligent to abandon the treatment halfway, especially when the patient's condition is deteriorating. If a doctor finds, on preliminary examination, that the case is beyond her/his capacity, she/he should refer the patient to a specialist or a hospital as soon as possible, after administrating primary treatment.



5. To care

Once a patient is under the care of the doctor it becomes her/his duty to use the best of her/his skill, knowledge and experience in treating the patient. In other words, the standard of care expected from a general practitioner should be at least that of a general practitioner's but may not be of a specialist's standard.



6. To attend

When a patient's condition requires continuous monitoring, a doctor must attend to her/him at regular intervals; especially if the patient has been admitted to hospital. It is the duty of the doctor to attend and take proper care of the patient admitted under her/his care. If the doctor remains untraceable or deputes another doctor without the consent of the patient, it is negligence.

7. To foresee problems

The doctor must keep in mind the possible side effects of the treatment, which she/he is going to give to the patient. She/he should try to avoid them as far as possible or take necessary steps in advance to overcome them. For example, a test dose to avoid a reaction to penicillin. In other words the reaction is not negligence but not taking proper measures to overcome it is definitely negligence. The same rule applies to the operation theatre, labour room, intensive care unit (ICU), and intensive coronary care unit (ICCU) etc.

The doctor must prescribe or dispense good quality medicines. She/ he must explain the dose, timings and precautions to be taken.

a) Dose: the patient's age, weight and all other relevant factors must be considered before deciding on the dosage.



- b) Adverse Reaction: the doctor must take a history of allergy before prescribing certain drugs and if indicated, carry out a test dose, as for example, with penicillin. Moreover the doctor must instruct the patient about side effects of the drug if any.
- c) Route: the doctor should specifically instruct the patient about the mode of administration, especially in the case of ointments and suppositories. Further, injections must be given at the proper site, as injury caused by a faulty technique in injection is negligence.
- d) Proper Medicine: Disease specific drugs must be used to treat any condition. A drug, which is not generally prescribed or is outdated, should never be used. She/he should prescribe rationally, and avoid undue usage, particularly of drugs which do not have sufficient clinical evidence or scientific backing. She/he should not be influenced by pharmaceutical companies and their often misleading marketing strategies. The doctor ideally should not receive any gifts, monetary benefits, etc. in exchange for prescribing a particular medicine.
- e) Prescription: the doctor must write down the prescription legibly with necessary instructions. The pharmacist should dispense the drugs according to prescription only, as changing the drug or supplying the wrong drug is an offence.
- f) Instructions: pharmaceutical companies usually print instructions about the date of expiry and other side effects on the wrapper of the drug. The doctor is supposed to read it before using the drug.

9. Equipment

Every doctor must keep all the necessary instruments and medicines required for preliminary examination and primary treatment. According to the original <u>Bombay Nursing Homes Act</u>, (and the Nursing Homes Regulations Act subsequently evolved) every nursing home must have equipment like a suction machine, sterilizer, oxygen cylinder and other life saving instruments. The operation theatre must be equipped with anaesthesia apparatus.

At the same time it must be understood that a doctor practising in a rural area may not be able to make available modern equipment or facilities.

10. Knowledge

In countries like the USA, UK etc. it is compulsory to obtain certificates of attendance for continuing medical programmes or completion of refresher courses at regular intervals in order to maintain one's licence to practise medicine. No such requirement is applicable in our country, but the government is contemplating rectifying this deficiency. Attendance at continuing medical education programmes for a specified number of hours will soon become a pre-requisite for renewal of a doctor's registration with the medical council.

At the same time it is obvious that a busy doctor cannot remain in touch with every latest development in the medical field. It is neither expected nor possible. But the doctor must keep abreast of developments in the medical field. She/he must have knowledge of what procedures are discarded and of innovations in the field.



Medical records

The medical record of the patient is a document. It contains details of the patient's complaints, symptoms, signs and other reports with dates and times. This report is confidential. Hence the doctor is duty-bound not to disclose the contents to anyone without the consent of the patient. This includes information acquired from other sources like reports of other specialist or paramedical sources. This duty is not absolute, but subject to the requirement of disclosure under compulsion of law and in the public interest. There is no clear law regarding ownership of medical records, but as the doctor prepares it, she/he has right to keep it in her/his possession. The patient can however request a copy, which the doctor is obliged to provide.



a) When can a doctor disclose a record?

- With the patient's consent
- By order of the Court
- Under some Act (e.g. M.T.P. Act)
- In the interests of State sponsored immunisation programmes (e.g. Cholera, small pox)
- In the public interest (e.g. HIV / AIDS, Syphilis) as part of a Public Health Programme
- When referring the patient for specialist treatment, in the interests of the patient



b) When can a patient get a copy of that record?

- To continue his treatment with another doctor, to establish continuity
- To take the opinion of a specialist
- To keep a record in her/his medical profile/file
- In hospital when the patient is under care of many doctors
- Within 72 hours of application to the doctor or the administrator in charge of the hospital

 When her/his records are needed for use by a lawyer or court of law

c) When can a doctor refuse?

- when the information is likely to disclose the identity of other patients
- When a report is prepared at the specific request of an employer or insurance company

d) What is the advantage of maintaining medical records?

- for research
- for preparing bills
- for evidence
- for future treatment

The doctor should not make any changes in the original medical record, as it is an offence. At the same time the patient should also not use the copy of a report or a certificate given by the doctor for a purpose other than for which it is obtained.

The medical record of the patient is a document. It contains details of the patient's complaints, symptoms, signs and other reports with dates and times. This report is confidential. Hence the doctor is duty-bound not to disclose the contents to anyone without the consent of the patient.

Consent



What is Consent?

As defined in the Indian Contract Act, 1872, "When two or more persons agree upon the same thing in the same sense, they are said to consent" In the present context, the doctor and the patient agree on a particular line of treatment.

There are various modes of consent:



🔼 1. Implied Consent

Action often speaks louder than words. Thus consent may be implied from the patient's conduct, words or the circumstances. Holding up one's bare arm to a doctor at a vaccination point is as good as assenting in so many words. Similarly when the child of a known family is brought to a family doctor, the parents' implied consent is apparent.

In the medical profession a patient consents to all the risks ordinarily incidental, but not to a negligent act. The implied consent has a limit; it may not cover high risk procedures or operations. It is therefore generally considered inadequate when a procedure requiring anaesthesia is involved.



2. Express Consent

This may be written or oral and consists of consent given for a specific purpose, such as therapeutic procedures and examinations. Express oral consent is generally considered inadequate for procedures requiring anaesthesia.

"When two or more persons agree upon the same thing in the same sense, they are said to consent" In the present context, the doctor and the patient agree on a particular line of treatment.

Express Written Consent

The Indian Medical Council Professional Conduct Etiquette and Ethics states that written consent should be obtained before an operation is performed. This may be taken from the patient, or the husband/wife, or the parents (in case of a minor). In some situations, as in the case of operations involving sterility, the consent of both husband and wife should be obtained. With written consent, one can prove that the patient has given consent for a certain type of treatment or procedure after properly understanding the treatment or procedure that is to be carried out. There is no fixed legal format for a consent form, but it is expected to be written in simple language, preferably in the regional language, which can be understood by the patients. It is better to take the patient's signature in the presence of a witness, after a full explanation of the pros and cons of the treatment is provided.

3. Informed Consent

Here the doctor has to provide all relevant information regarding the disease and treatment options to the patient. The doctor should disclose all material risks, which are significant and may pose a real threat to the patient's life, health or comfort. These conversations must be in a language that the patient can fully understand, and be able to take a rational decision in relation to his family, social, economic and other circumstances. The doctor may not explain unusual or special risks, which are not ordinary, common or everyday matters in every case, unless the proposed treatment is experimental.

Informed consent has now become the gold standard in medical practise.

4. Proxy Consent

This refers to consent given by someone, other than the patient, empowered to do so in certain special circumstances. The best example being a parent consenting on behalf of a minor child.

Other situations include a close relative consenting on behalf of an unconscious or mentally unsound patient, or a legal guardian consenting by loco parentis.



5. Exceeding Consent

In exceptional cases during treatment or operation, a doctor may cross the limit of consent to save the life of the patient and this is particularly applicable to emergency cases.

The conclusion of the above discussion is that 'valid consent' must satisfy following points:

- a) The consent must be voluntary without any moral, monetary or other pressure.
- The consent must be obtained from an adult possessing reasonable capacity to comprehend what is explained. In case of a child or mentally retarded patient, consent must be obtained from her/his parents, legal quardian or the court, in writing.
- Informed consent form should preferably be approved by an c) Institutional Ethics Committee.
- d) Consent obtained by misrepresentation or hiding some material facts is invalid.
- The consent must be obtained after explaining the direct risks involved in the treatment. Here it may not be necessary to explain all possible risks. In certain specific cases, the doctor may exercise "therapeutic privilege" and withhold information as explained earlier.
- The doctor may go beyond the consent in an emergency and f) to save the life of a patient.
- g) The consent must be an informed consent preferably in writing and in the presence of impartial witnesses.



6. Consent to take part in clinical trials

A doctor is obliged by law to take detailed and informed consent without exception under the provision of the Ethics Committee. In these cases, the consent has to address every detail of the trial, the complications, risks, etc. The trial itself has to be approved 46

by an Ethics Committee. In the course of the trial, the patient is entitled to the monitoring of her/his health by the highest standards available. All explanations must be in the patient's own language and with a minimum of technical jargon.

7. Exceptions to obtaining consent

As mentioned earlier, many times a doctor cannot take consent because of the patient's serious condition or other circumstances. In the following situations a doctor provides treatment in good faith and for the benefit of the patient/society without consent. This is not negligence.

a) In an emergency:

Sometimes an unconscious patient is brought to the doctor; her/ his relatives may not be present and patient is likely to die without treatment. In these circumstances, the doctor cannot remain a spectator and wait for the formalities of consent to be completed. Here she/he starts the treatment and it is by no means illegal.

b) In the patients' own interest:

Sometimes patients are not willing to take any treatment; for example, a person on indefinite fast or in cases of attempted of suicide. Here the doctor attempts to give treatment to save her/his life without his consent.

c) By Statute:

Under provisions of certain acts, like Mental Act, Public Health Act etc., a patient's consent is not required to for treatment.

d) Court's Order:

For example, operations done on persons smuggling narcotics or gold in the intestine or other parts of the body.

8. Informed Refusal

It must be remembered that a patient, after having all the relevant information explained to him, is entitled to refuse treatment.

The rights of a doctor

Though this book talks mainly of Patients' rights, it is also important to understand what the rights of health care providers are:

1. Selection of patient

Ordinarily, a private doctor seldom refuses to treat a patient. But it must be remembered that just as a patient has a right to select a doctor, a doctor also has a right to select a patient. In other words, a doctor is not bound to treat every person and indeed it is not possible to, because it would stretch his capabilities beyond reasonable limits.

- A doctor may refuse to give fresh treatment to a patient, with whom she/he has had a bad experience in the past.
- In an emergency a doctor treats a patient on ethical grounds. This does not mean that she/he has accepted the patient. She/he may advise that patient to go to some hospital or a specialist for further treatment.
- If a patient does not agree with the method of treatment or fee asked, a doctor may refuse to treat the patient.
- In her/his honest opinion, if a doctor feels that she/he is not in a position to treat a patient because of non-availability of certain facilities, instruments, medicines, staff etc., she/he may refer him to suitable place.

A doctor in a government hospital has no such rights, because a government hospital is a public service and every citizen of India has a right to avail of that facility. If appropriate facilities are not available on site, the government hospital is obliged to make alternative arrangements.

2. Selection of drugs

In some diseases more than one medicine is effective, and the decision as to which one should be prescribed is an absolute right of the doctor. Here the doctor applies her/his own knowledge,

experience and skill over and above giving consideration to the theoretical effects of the medicine. It is also the doctor's choice to select the pharmaceutical company. A good doctor always selects a reliable company. In government hospitals, a doctor should not prescribe medicines from outside when they are available at the hospital. Unfortunately, very rarely is a specific medicine available at a particular moment.

3. Selection of method of treatment

In medical science, more than one line of treatment may be approved and available for a disease. A doctor may adopt any one of them. For example, for the treatment of stomach ulcers, a number of procedures and operations are approved and a doctor may select whichever one of them she/he thinks is best for the patient in his honest opinion. Moreover, during operations from anaesthesia to suture, everything is decided by the surgeon who takes full responsibility for her/his decisions.



4. Investigations

It is not always possible for a doctor to make a positive diagnosis by a clinical examination alone. Additional laboratory investigations such as X-ray, biochemical tests, sonography etc.

> A doctor in a government hospital cannot refuse treatment to any patient, because a government hospital is a public service and every citizen of India has a right to avail of that facility. If appropriate facilities are not available on site, the government hospital is obliged to make alternative arrangements.

may be required. The doctor is the best judge of the number and type of investigations to be carried out. Some doctors insist on a particular laboratory or x-ray clinic as in her/his opinion it provides the most reliable reports. A patient might misinterpret this. Hence the doctor may indicate, but cannot/should not insist on a particular facility.

5. Police Case: Medico Legal Case (MLC)

A doctor has the right to treat any ailment a patient has, which also includes accidental injuries. Thus a doctor can take up any medico-legal case without hesitation. At the same time, as a duty bound citizen she/he is supposed to inform the police as soon as possible about cases where the circumstances arouse suspicion. If the patient is a female and a suspicious accident occurs within seven years of marriage, a statement should be recorded by a judicial magistrate.

6. Delegation of power

A patient may be under a doctor's treatment, but the entire treatment and care may not be manageable by a single person. It may require the help of additional doctors, nurses, technicians and other qualified staff. The doctor in overall charge will therefore have to delegate some powers to other qualified persons.

*** 7. Fees

The doctor has a right to recover her/his fees from a patient, to whom she/he has given treatment. The fee is usually fixed at the initial consultation, and unless the doctor intended to provide a free service, the patient must pay a reasonable fee to the doctor. Often, patients refuse to pay the fee after treatment is over, and the doctor, just to recover the fee, does not discharge the patient or tries to keep hold back some of the patient's moveable property. This is a crime. The only way the doctor can recover the fee is through a civil suit. To avoid this problem, the doctor should inform

the patient of the approximate expense of the treatment. She/he may take part of it in advance and the remainder in instalments. The doctor is obliged to make available a complete schedule of her/his fees. If the doctor is treating a patient on a complimentary basis on humanitarian grounds, usually on the recommendation of some doctor or known person, it is advisable to record this on the case papers.



8. Medical records

As a patient's medical record is prepared by the doctor on her/his own stationery, it becomes the doctor's property. A doctor may not disclose it to the patient, if in her/his opinion the disclosure is not in the patient's interest, in the exercise of "therapeutic privilege". On the other hand she/he may disclose the record in whole or part in the public interest or under some statute.



9. Domiciliary/Hospital visits

The doctor is not bound to honour every single request for a visit, especially at odd hours. Her/his compliance depends on the prevailing circumstances. It is expected that the doctor would visit a patient, who is under her/his treatment and whose condition is worsening. Similarly it is expected that a patient admitted into a hospital, is visited by the treating doctor at least once a day. In this sensitive matter the doctor should take a decision according to the time, place and circumstances.

Patients' Rights at a Pharmacy



The duties and obligations and the code of ethics for a pharmacist are listed in the ordinary law of the land and various codes of ethics and declarations. In India, pharmacists are obliged to follow the code of ethics prescribed by the PCI (Pharmacy Council of India), and are bound by various other Acts and rules under the Act:

- 1) The Drugs and Cosmetics Act (1940) & Rules (1945)
- 2) The Pharmacy Act 1948
- 3) The Drugs and Magic Remedies (Objectionable Advertisements)
 Act
- 4) Poison Act
- 5) PFA Prevention of Food Adulteration Act
- 6) NDPS The Narcotic Drugs and Psychotropic Substances Act
- 7) The DPCO The Drugs Pricing Control Order



Duties of a pharmacist/pights of a patient at the pharmacy

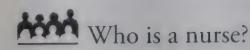
- To have medicines prescribed by a doctor dispensed adequately and with appropriate instructions.
- To ensure that the patient is charged the correct price for the drugs sold
- To obey and follow all the rules and regulations pertaining to a Pharmacist
- To ensure that the customer/patient gets satisfactory service at the pharmacy
- To ensure that the patient is told in a simple manner how

to take the medicines, what their medicines are for, what precautions to take while off medication, what side effects to expect and how to manage their side effects if they appear

- To assure that the medicines dispensed to the patients are procured and stored properly, in the correct manner and at the right temperature
- To issue a neat cash memo, complete in all respects
- To assure that all medicines are dispensed under the supervision of a qualified pharmacist who has been duly registered with the respective State Pharmacy Council, and whose name has been entered by the Drugs Control Department of the State in the original licences of the pharmacy.

A pharmacist should assure that the medicines dispensed to the patients are procured and stored properly, in the correct manner and at the right temperature.

Nurses



The general public assumes that the lady in white, who wears a cap and works in a hospital, performing tasks like – giving medications and injections, taking temperature etc. – is a nurse. However that may not be the case. A nurse is a person who has completed a programme of basic generalised nursing education and is authorised by the appropriate regulatory authority to practise nursing in her/his country. In India, this authorisation rests with the State Nursing Councils, which in turn comes under the jurisdiction of the Indian Nursing Council at the Centre, established by an Act in 1947. It is wise to check if the nurse that you might be in contact with is registered or not.

Like many other facilities, there are many different courses of nursing. There is a general nursing/midwifery course, which is a basic diploma course in nursing; a basic BSc degree course in nursing; a postgraduate M Sc course, and even a doctorate course in nursing.



What are the duties of a nurse?

The nurse's primary responsibility is to the people who require care. All nurses have a duty to maintain the rights of patients.

The specific duties of a nurse are:

To care

The role of caregiver is the primary duty of a nurse. A nurse cares for people by providing comfort and support by listening evaluating and intervening appropriately after assessing and planning. The care aspect is more than "to take care of" – it is to do with "caring for" and "caring about" as well. A nurse is bound to provide care such that the patient's values, customs and spiritual belief are respected.

To teach

An important part of the nurse's duty is to assess the needs of the patient in terms of knowledge and ability for self-care and, where lacking, to teach the skills necessary to assume greater responsibility for her/his self-care. Nurses also have a responsibility to teach patients how to promote health and prevent illness, as they spend a greater portion of time with the patient as compared to doctors, physiotherapists etc.

To collaborate

No other member of the health team is with the patient 24 hours a day, 7 days a week. It is therefore the nurse's duty to collaborate and coordinate patient care activities with all the other health team members.

To record and report

The nurse is responsible for reporting all changes in patient's condition to the attending doctor and to maintain records of all observations and nursing care administered to the patient.

To exercise judgement in accepting and delegating nursing care. Any member of the nursing team can carry out nursing care. Each aspect of nursing care requires various skills to carry them out. Hence when delegating tasks, it is the duty of the nurse who delegates to judge the competence and qualification of the nurse to whom the task has been delegated prior to this delegation. The nurse accepting the task also has a responsibility to keep in mind her/his competence in performing the task and her/his qualifications when accepting to perform tasks assigned. In case a nurse believes an order is harmful to the patient she/he has a duty to refuse or formally protest the order.

To keep in touch

Nurses must keep in touch with changes in the field of nursing and related areas so that the best possible care can be given.



Rights of a Nurse:

Nurses enjoy full civic and political rights. They have the right to adequate emoluments, just condition of service, and professional independence.

Nurses are generally covered by the term "Vicarious Liability", which means that "a person is responsible for any wrongful act committed by a subordinate, provided such an act is within the scope of their employment". In other words, the doctor under whom a patient is admitted and the hospital are ultimately responsible for any errors of the nurse, provided such errors occurred in the course of her/his normal duties.



The specific rights of a nurse are:

Hours of duty

As the job of the nurse is both physically and mentally demanding, , it is unreasonable to expect any nurse to perform efficiently if she/he has to work beyond the prescribed hours of duty. The norms are not more than 48 hours a week and not more then 8 hours a day.

Work place

No nurse is expected to work in an environment which is hostile, unsafe and which does not have the minimum requirements for maintaining normal standards of hygiene and health.

There are specific recommendations made in various Nursing Home Regulation Bills, and Accreditation Standards regarding nurse-patient ratios, in various departments. For example, in a general ward, the ratio should be about one nurse for very ten patients per floor per shift.

In specialised units, such as Intensive Care Units, Intensive Coronary Care Units, Renal Units etc., the ratio may be higher, namely 1:1 or 1:2. The ultimate aim being, the more specialised

and intensive the care required, the greater the need for a nurse specifically dedicated to that patient.

Nature of work

A nurse can refuse to carry out work which she/he is not qualified/ trained to do. She/he can also petition for additional training to work in any area that requires special skill.

No nurse is expected to work in an environment which is hostile, unsafe and which does not have the minimum requirements for maintaining normal standards of hygiene and health.



Conclusion

If there is a key phrase for this entire document, it must be 'creating awareness'. Awareness on the part of the patient, of what to expect from health care providers; awareness of what the patient's obligations are in the process of getting adequate service; and awareness of what to do in the event that he or she is denied his or her due. It also seeks to create awareness on the part of the health care providers – awareness of what the general public can expect from them; and awareness of their duties and indeed rights.

The ultimate purpose is to create an atmosphere that is conducive to efficient health care delivery.

Bibliography

 The Constitution of India Fundamental Rights

Article 14, 15 (1), 15 (2) (a), 15 (2) (b), 15 (3), 15 (4), 17, 18 and Part XVI

Article 19(1) (a), 19(1) (c), 19(1) (d), 19(2), 21, 22, 23 - 24 Article 26 - 29, 32

Directive Principles of State Policy

Article 38, 39 (a), 39 (e), 39 (f), 41, 42 and 47, 48 (a) in part IV Article 326

- 2. Universal Declaration of Human Rights Article 1-12, 19, 23-25 (1), 27, 28
- 3. International Covenant on Civil and Political Rights Articles 1-19, 24-27
- Convention on the Rights of the Child
 Article 2, 3, 6, 10, 12, 13 (1), 14, 15, 16, 17, 18, 19, 23, 24 (a), 24 (b), 24 (c), 24 (d), 24 (e), 24 (f) and 25 in part I
- 5. Bakshi P.M. (1994), The Constitution of India: Selective Comments by P. M. Bakshi, Delhi Universal Book Traders
- 6. Bhore Committee (9146), Report of the Health Survey and Development Committee, Vol. I: Survey, Vol. II: Recommendations, Vol. III: Appendices, New Delhi: GOI, Manager Of Publications
- 7. William, Hyg SM (1989), The Constitutional Right to Health Care, The New England Journal Of Medicine, March 23, 1989, pp. 788-9
- 8. Jesani Amar, Duggal Ravi (1992), Medical Ethics, Voluntary Health Association, The State of India's Health, New Delhi, VHAI, pp. 365-375
- Goa, Medical Council Act, 1991 and Rules, 1995 and The Goa
 Medical Council (validation of appointment and proceedings) Act, 1998; Government of Goa, Panaji

- 10. The Indian Medical Council (Amendment) Act, 2001; The Gazette of India, Extraordinary Part II-Section 1, published by Authority, New Delhi
- 11. The Goa Medical Practitioners Act, 2004; Official Gazette, Extraordinary No.2, Series I No. 1, Government of Goa, Panaji
- 12. The Official Gazette, Extraordinary No. 4, Series I No. 51, Government of Goa, Panaji
- 13. Indian Medical Council Act, 1956
- 14. The Right to Information Act, 2005
- 15. Consumer Protection Act (C.P.A), 1986
- 16. Medical Termination Of Pregnancy (MTP) Act, 1971
- 17. Bombay Nursing Homes Act, 1949
- 18. Indian Contract Act, 1872
- 19. Mental Act, 1987
- 20. Public Health Act, 1848
- 21. The Drugs and Cosmetics Act, 1940 and Rules, 1945
- 22. The Pharmacy Act, 1948
- 23. The Drugs and Magic Remedies (Objectionable Advertisements)
 Act, 1954
- 24. The Poison Act, 1919
- 25. Prevention of Food Adulteration (PFA) Act, 1954
- 26. The Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985
- 27. The Drugs Pricing Control Order (DPCO) Act, 1995
- 28. The Indian Nursing Council Act, 1947
- 29. Rights of a Patient

 http://216.25.100.131/Ethics_Forum/PDFs/1_Sponsorship_Issues_

 Preamble.pdfhttp://www.aha.org/aha/content/2003/pdf/pcp_

 english_030730.pdf

- 30. Patient Rights and Responsibilities: A Draft For Consultation http://www.scotland.gov.uk/consultations/health/prrc-00.asp
- 31. UK Health Care http://www.ukhealthcare.uky.edu/patient/rights_english.htm
- 32. Patients Association: Survey of the UK Public: Patients' Rights http://www.patientsassociation.org.uk
- 33. Patients Rights and Responsibilities http://www.rcseng.ac.uk/patient_information/publications/patient_rights.pdf
- 34. Access to Health Records by Patients http://www.bma.org.uk/ap.nsf/Content/accesshealthrecords
- 35. Patient Confidentiality and Access to Health Records http://www.dh.gov.uk/PolicyAndGuidance/InformationPolicy/PatientConfidentialityAndCaldicottGuardians/fs/en
- 36. Latest Report Reveals Patients Unaware of Rights http://www.patients-association.org.uk
- 37. Patients' Bill of Rights http://www.cancer.org/docroot/mit/content/mit_3_2_patients_bill_ of_rights.asp http://www.opm.gov/insure/health/billrights.asp
- 38. Consumer Protection and Quality in the Health Care Industry http://www.hcqualitycommission.gov/final/append_a.html
- 39. NHS Patients' Rights http://www.adviceguide.org.uk/index/family_parent/health/nhs_patients_rights.htm#Right to a GP
- 40. How to Choose the Right Doctor for You http://arthritis.about.com/cs/docpad/ht/choosedoctor.htm
- 41. To Choose Your Physician http://www.patientprotect.com/en/medecin.html
- 42. A Rational Approach to Tests http://www.labtestsonline.org/understanding/index.html

43. Deciding on a Line of Treatment http://www.komen.org

44. Selecting a Hospital

http://www.healthcarechoices.org/newslet/newschooshosp.htm http://medicalcenter.osu.edu/patientcare/hospitalsandservices/ insurance/guide/hospital.cfm http://medicalcenter.osu.edu/patientcare/hospitalsandservices/ insurance/guide/decision.cfm

45. Quality Council of India (QCI)

http://www.gcin.org/html/about/about_gci.htm

46. National Accreditation Board for Hospitals and Health Care Providers (NABH)

http://www.qcin.org/html/nabh/nabh_intro.htm

47. International Society for Quality in Health Care (ISQua) http://www.isqua.org.au/isquaPages/General.html http://www.isqua.org/isquaPages/Accreditation.html

48. Australian Council on Health Care Standards
http://www.qhc.com.au/index.php?sectionID=2501&pageID=2539

49. Filing a Complaint

http://www.corecentre.org/guest/focus/linkdetails.asp?ID=medical2_focus

50. Duties of a doctor

http://www.hmc.org.qa/cme/Interns/duties.htm http://www.gp-training.net/training/intending_trainers_course/dutdoc.htm

51. Advantages of Medical Records

http://www.myphr.com/what/index.asp http://www.myphr.com/rights/index.asp

52. Independent Ethics Committee

http://iecindia.org

http://biomedicalethicscommittee.org/

Rights of a Doctor http://www.expresshealthcaremgmt.com/20021231/focus4.shtml

54. Rights of a Patient at the Pharmacy http://www.pharmacy.ca.gov/consumers/index.htm http://www.pharmacy.ca.gov/consumers/consumer_tips.htm http://www.pharmacy.ca.gov/consumers/bill of rights.htm

55. Duties of a Pharmacist http://www.uspharmd.com/rxpharmacist.htm http://www.ok.gov/opm/jfd/x-specs/x26.htm

56. Duties of a Nurse http://www.nursingworld.org/ethics/ecode.htm http://www.nursingworld.org/ethics/code/protected_nwcoe303.htm

57. Rights of a Nurse http://www.nursingpower.net/union/bill.html

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About VHAI

Voluntary Health Association of India (VHAI) is a non-profit, registered society formed in the year 1970. It is a federation of 27 State Voluntary Health Associations, linking together more than 4500 health care institutions and grassroots level community health programmes spread across the country.

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